

Joint Written Summary of Discovery Dispute

No. CV-23-002711-PHX-DWL

Plaintiff's Exhibit B

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**United States District Court
for the District of Arizona**

Federal Trade Commission,
Plaintiff,

v.

Grand Canyon Education, Inc.; Grand Canyon
University; and Brian E. Mueller,
Defendants.

No. 2:23-cv-02711-DWL

**Defendant Brian Mueller's Objec-
tions to Plaintiff FTC's Second Set
of Requests for Production of Docu-
ments**

Pursuant to Federal Rule of Civil Procedure 34, Defendant Brian Mueller provides the following objections to Plaintiff FTC's Second Set of Requests for Production of Documents ("Requests").

GENERAL OBJECTIONS

Defendant incorporates the following contentions and objections as if set forth in

1 each of the numbered paragraphs below.

2 A. Defendant's investigation and development of facts and circumstances relat-
3 ing to this action are ongoing. Subject to the objections and expected meet and confers with
4 opposing counsel, Defendant intends to provide good-faith responses where required.
5 These responses and objections are made without prejudice to, and are not a waiver of,
6 Defendant's right to rely on other facts or documents at trial.

7 B. Defendant expressly reserves the right to supplement, clarify, revise, or cor-
8 rect any or all of the responses and objections herein, and to assert additional objections or
9 privileges, in one or more subsequent supplemental response(s).

10 C. By making the accompanying responses and objections to Plaintiff's Re-
11 quests, Defendant does not waive, and expressly reserves, its right to assert any and all
12 objections as to the admissibility of any documents into evidence in this action, or in any
13 other proceedings, on any and all grounds including, but not limited to, competency, rele-
14 vancy, materiality, and privilege. Further, Defendants makes the responses and objections
15 herein without in any way implying that it considers the documents requested to be relevant
16 or material to the subject matter of this action.

17 D. Defendant objects to any request seeking confidential proprietary business
18 information that is irrelevant to the issues in this case. To the extent some or all of the
19 confidential proprietary business information sought by Plaintiff is determined by the Court
20 to be subject to production, Defendant insists on a comprehensive protective order limiting
21 the use, dissemination, and access to any such information.

22 E. Privileged information responsive to any Request will not be provided. De-
23 fendant does not waive but rather intends to preserve and is preserving the attorney-client
24 privilege, the work-product protection, and every other privilege or protection with respect
25 to all information protected by any such privileges or protections. Defendant will not know-
26 ingly provide documents or information that is subject to any applicable privileges or pro-
27 tections. If any privileged or protected document or information is inadvertently disclosed
28 by Defendant at any time, Defendant requests, pursuant to requirements of Rule 26, that

1 Plaintiff immediately return to Defendant's counsel all documents, copies, and other media
2 that refer to or reflect such inadvertently disclosed documents or information. Defendant
3 will provide a log (or logs) describing any documents over which it asserts privilege or
4 protection from discovery in sufficient detail to allow the Plaintiff to evaluate such claims.
5 Defendant will not include documents on such log (or logs) that reflect or relate to privi-
6 leged communications between Defendant and its current counsel in this case relating to
7 this litigation, the FTC's investigation, or the Department of Education's investigation or
8 action concerning the same or similar claims, or related matters or attorney-work product
9 created for this litigation or related matters.

10 F. Defendant objects to the Requests, including the "Definitions" and "Instruc-
11 tions," to the extent they seek to impose any duties or requirements other than those re-
12 quired by the Federal Rules of Civil Procedure. By way of example, Defendant objects to
13 Instruction 2.

14 G. Defendant will produce documents in the form they were kept in the ordinary
15 course (unless it is necessary to change the format or file type to permit redaction) on a
16 rolling basis in a reasonable time and fashion hereafter; and it will work with Plaintiff to
17 identify the schedule for these rolling productions.

18 H. Defendant endorses the mandate in Rule 26(g) that a reasonable inquiry will
19 be made in connection with responding to the document requests issued by the plaintiff.
20 With respect to any electronically stored information as referenced in Federal Rule 34,
21 Defendant objects to producing any documents other than as they are kept in the usual
22 course of business. Further objection is made pursuant to Federal Rule 26, including 26(b),
23 in any instance that the following considerations are not used to assess whether a specific
24 document request is appropriate: a) the importance of the issues at stake; b) the amount in
25 controversy; c) the parties' relative access to the information; d) the importance of the dis-
26 covery to resolving the relevant issues; and e) whether the burden and expense of the pro-
27 posed discovery outweighs its likely benefits.

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1 I. Defendant objects to document requests seeking electronically stored infor-
2 mation on the basis that the discovery presents an undue burden both in effort and cost in
3 a manner disproportionate to the defendant. And the discovery requests by the plaintiff are
4 disproportionate to the needs of this case.

5 J. Defendant further objects to the Requests to the extent they seek the produc-
6 tion of information stored on resources that are not generally accessible without undue
7 burden and expense, including production of any ESI that is not reasonably accessible such
8 as “orphaned data,” junk or irrelevant ESI outside the scope of permissible discovery,
9 server, system, or network logs or electronic data temporarily stored by scientific equip-
10 ment, documents collected from custodians that cannot be processed with known or avail-
11 able tools, electronically stored information sent to or from mobile devices that is routinely
12 saved elsewhere, and data stored on photocopiers, scanners, and/or facsimile machines.

13 K. Defendant objects to these Requests as overly broad, unduly burdensome,
14 and unlikely to produce relevant information to the extent they are not limited to a specific,
15 relevant time period or to claims or defenses in this case.

16 L. When Defendant responds that he will produce documents in response to a
17 Request, Defendant will produce non-privileged documents to the extent that they exist
18 and can be identified through a reasonable search of files and other repositories likely to
19 contain responsive material. By stating that he will produce documents, Defendant does
20 not represent that responsive, non-privileged documents in fact exist, or that they are within
21 its possession, custody, or control, but rather states it will undertake a reasonable search
22 for relevant and responsive documents.

23 M. Defendant objects to the Requests as unduly burdensome to the extent they
24 seek the production of information already in Plaintiff’s possession, custody or control, or
25 information that is readily accessible from publicly available sources.

26 N. Defendant incorporates by reference every general objection set forth above
27 into each specific response set forth below. A specific response may repeat a general
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objection for emphasis or some other reason. The failure to include any general objection in any specific response does not waive any general objection to that Request.

O. Defendant is willing to meet and confer with Plaintiff about the following requests and objections thereto in an effort to resolve any discovery disputes.

SPECIFIC OBJECTIONS

1. Documents created on or after January 19, 2017, to compile data, calculate statistics, or discuss data or statistics about the number of continuation courses taken by students enrolled in Doctoral Programs, or the duration of enrollment in Doctoral Programs. This request includes the original, revised and updated versions of spreadsheet file “All Years CDS Graduates and times with 975s added.xlsx”, and “BRM-Dissertation Continuation Report.xlsx”; the sources for statistics on duration, cost, or continuation course numbers that are or have been published at “About Doctoral Programs at GCU,” <https://www.gcu.edu/college-of-doctoral-studies/about-doctoral-programs>, in enrollment agreements, in net price calculator estimates, in LOPES credit evaluation reports, in 22STAT0143 (Doctoral time to completion) statements, and in the statement titled “Doctoral Disclaimers Acknowledgement.”

Response/Objection: Defendant specifically incorporates his objections to the FTC’s First Requests for Production of Documents, to the extent the FTC’s prior numbered requests were, in fact, requests for multiple, distinct categories of documents, which would evade or neuter the Court-imposed 25-requests limit. Like the FTC’s prior document requests, this request seeks multiple categories of documents—e.g., (1) documents compiling data or calculating statistics, (2) documents discussing data or statistics, and (3) the source for statistics on duration, cost, or continuation course numbers associated with several distinct documents or webpages—and thus constitutes no less than three separate document requests. Inclusive of the FTC’s prior requests, this request accurately constitutes FTC requests 23-25. Defendant further objects to the request as overbroad, unduly burdensome, and disproportionate to the needs of the case in that it (a) demands Grand Canyon University (for whom discovery is currently stayed) engage in substantial discovery, including incurring the time and expense

1 to collect, identify, review, and produce responsive information; and (b) seeks information
2 duplicative of discovery served on Grand Canyon Education, *see, e.g.*, FTC Interrogatory
3 No. 1 served on GCE. Moreover, the burden of conducting a search to gather and produce
4 documents potentially responsive to this request is not justified by the value of search a
5 search and production to resolving the issues in this Litigation. Likewise, Defendant objects
6 to the requests to the extent it includes Educational Records or PII, as the value of the re-
7 quested data and statistics to resolving the issues in this Litigation does not justify the cost
8 in time or expense of serving FERPA notices. To the extent Defendant produces documents
9 responsive to this requests that include Educational Records or PII protected from disclosure
10 by FERPA, Defendant reserves the right to produce documents or data in a format that avoids
11 the disclosure of current or former student PII through disclosure techniques that comply
12 with 34 C.F.R. § 99.31(b)(1), including, though not limited to, the redaction, anonymization,
13 and/or de-identification of PII to avoid the identification of any current or former student.
14 Defendant further objects to the request to the extent it seeks documents that can be more
15 easily obtained from other sources or to which the FTC already has access, including docu-
16 ments previously produced in response CIDs issued by the FTC. Defendant further objects
17 to this request to the extent it seeks documents protected by the attorney-client privilege,
18 work product doctrine, and common interest privilege. Defendant is willing to meet and con-
19 fer with the FTC to bring the request within reasonable and proportionate grounds.

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21 Dated: January 6, 2025

Respectfully submitted,

22 /s/ Jacob C. Shorter

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